

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 10, 2011

In the Matter of DEESE, Minors.

No. 300915
Wayne Circuit Court
Family Division
LC No. 07-466602

In the Matter of DEESE, Minors.

No. 300916
Wayne Circuit Court
Family Division
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Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father Deese and respondent-mother Garcia appeal as of right the order terminating their parental rights to their two minor daughters. Respondents' parental rights were terminated pursuant to MCL 712A.19b(3)(g) and (j). Garcia's parental rights were also terminated pursuant to MCL 712A.19b(3)(c)(i). We affirm.

The events that give rise to the instant appeal began in April 2007, when Garcia was involved in an accident and, thereafter, arrested for operating a vehicle while intoxicated and without a valid driver's license. At the time of the accident, the then 11-month-old older child at issue in this appeal was a passenger in Garcia's car. Also, Garcia was approximately six months pregnant. Following Garcia's arrest, the older child was removed from her care and, because Deese was incarcerated, the infant was placed with protective services and a petition was filed seeking temporary custody. Shortly after this, Garcia went into premature labor and gave birth to a son. This child tested positive for opiates and lived for only four days. Respondents thereafter made certain admissions, and the court took jurisdiction of their daughter. Respondents were offered a treatment plan, which included for Garcia individual counseling, psychiatric evaluation, parenting classes, substance abuse assessment/treatment, drug screens, a legal source of income, and obtaining and maintaining suitable housing. With respect to Deese, his treatment plan also included complying with the terms of his probation. Over the next year, respondents' compliance with their treatment plans would be best characterized as inconsistent. There were periods of progress, followed by multiple regressions.

When Garcia gave birth in May 2008 to respondents' younger daughter at issue in this appeal, the newborn tested positive for cocaine, Xanax, and Vicoden, and a petition was filed to remove her from respondents' care. After this child was born, respondents made little progress toward reunification. Consequently, a permanent custody petition was filed, and a termination hearing was conducted over the course of three months. By the time this termination hearing concluded in March 2009, respondents had demonstrated progress toward removing the barriers to reunification, and the lower court denied the petition to terminate respondents' parental rights.

Over the next year, however, respondents' compliance with their treatment plans was, again, inconsistent. Consequently, a supplemental petition seeking termination of respondents' parental rights was filed in June 2010. The second termination of parental rights hearing was held in September 2010. At the conclusion of this hearing, the trial court entered an order terminating respondents' parental rights to their two daughters.

Both respondents argue that the statutory grounds for termination of their parental rights were not established by clear and convincing evidence. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(K); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In order to be clearly erroneous, the finding must strike this Court as more than just maybe or probably wrong. *Sours*, 459 Mich at 633.

We first address the evidence related to the court's termination of respondent Deese's parental rights. At the time of the second termination hearing, the older daughter had been in foster care for three of her four years. Her two-year-old sister had been in foster care her entire life. Deese was incarcerated at the time that each of his daughters individually became temporary wards of the court. During the entire time the children were in care, Deese was unable to consistently demonstrate that he could parent his children, refrain from participating in criminal activity, and live a substance-free lifestyle. In addition, Deese was never able to obtain and maintain suitable housing and a legal source of income. Deese contends that he was in compliance with his treatment plan. However, while he participated in some aspects of his treatment plan, he did not show any benefit from the services offered, never internalizing what he learned or integrating what he was taught. This was clearly evidenced by the fact that Deese was unable to avoid participating in criminal activity during the entire three years the action was pending. Based upon these findings, the trial court did not err when it terminated respondent Deese's parental rights pursuant to MCL 712A.19b(3)(g) and (j).

We also find that the statutory grounds for termination of respondent Garcia's parental rights were established by clear and convincing evidence. The older daughter came into care because Garcia's substance abuse placed the child at great risk of harm, Garcia lacked suitable housing, and there was no one to care for the child after Garcia was arrested for DUI. Over the course of the next three years, Garcia would be offered a multitude of services. While at times she made progress, Garcia was never able to sustain forward momentum for any appreciable period of time. Indeed, at the time of the second termination hearing, very little had changed

from when the older daughter first came into care in 2007. Garcia had yet to demonstrate that she had adequately addressed her substance abuse issues. She did not consistently comply with the required drug screens and was clearly continuing to abuse substances as her younger daughter was born with opiates in her system a year after the older child's removal. Garcia further continued to engage in criminal activity throughout the pendency of the matter, and she failed to obtain and maintain suitable housing and a legal source of income.

Respondent Garcia was given every opportunity to remove the barriers that separated her from her children. Despite these opportunities, she never demonstrated that she internalized anything that she had been taught. Garcia may have participated in the treatment plan; however, she showed no benefit from the services offered. Further, considering the length of time the children were in care, and the failure to sustain any progress, it was unlikely that the conditions would be rectified within a reasonable time considering the children's ages. Based upon this evidence, the trial court did not err when it concluded that the statutory grounds for termination of respondent Garcia's parental rights were established by clear and convincing evidence.

Both respondents also argue that there was not clear and convincing evidence that termination of their parental rights was in their children's best interests. We disagree. If a statutory ground for termination is established and the trial court finds that termination is in the child's best interests, the court must terminate parental rights. MCL 712A.19b(5). The children had been in foster care for an inordinately long period of time. The lack of permanence and stability was clearly taking its toll on the children. The older daughter exhibited a great deal of anxiety and would become anxious and worry about the location of her foster parents. The foster parents would frequently wake in the night to find her sleeping next to their bed. It was abundantly clear that the children were in desperate need of stability and permanence. Termination of respondents' parental rights was in the children's best interests and was necessary to facilitate their continued healthy growth and development.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood